

Remarks

Applicants have canceled claims 1 and 3-24 without prejudice or disclaimer and added new claims 25-40. Accordingly, upon entry of the present amendment, original claim 2, and new claims 25-40 will be pending. Applicants hereby reserve the right to pursue canceled subject matter in subsequently filed continuing applications.

New claims 25-40 have been added in order to claim additional embodiments of the subject matter of the provisionally-elected group. Support for these claims can be found throughout the specification as filed. In particular, support for claims 25-40 can be found in the specification, for example, at page 64, line 25 to page 67, line 20; at page 146, lines 22-27; and at Table 1A, page 71, column 10. Support for claims 35-40 can be found in the specification, for example, at page 157, line 26 to page 158, line 5. Support for claims 28 and 36 can be found in the specification, for example, at page 162, line 27 to page 164, line 15; page 206, line 3 to page 207, line 21; and at page 217, lines 14-27. Support for claims 29 and 37 can be found in the specification, for example, at page 212, lines 3-6. Support for claims 30 and 38 can be found in the specification, for example, at page 155, lines 22-24; and at page 212, line 19 to page 215, line 30. Support for claims 31 and 39 can be found in the specification, for example, at Example 23, page 386, line 23 to page 413, line 16. Support for claims 32 and 40 can be found in the specification, for example, at page 146, lines 1-5 and lines 12-19; at 209, lines 8-29; and at Examples 5-8, at page 353, line 13 to page 362, line 3.

In addition, the title has been amended to reflect the provisionally elected sequence. Accordingly, no new matter has been added and entry of the present amendment and remarks are respectfully solicited.

I. The Restriction Requirement

Pursuant to Paper No. 0903, mailed September 29, 2003, the Examiner has required an election under 35 U.S.C. § 121 of one of Groups I-VI. The Examiner contends that the inventions are distinct and have acquired a separate status in the art as shown by their different classification. Paper No. 0903, page 4, paragraph 9.

In response, Applicants provisionally elect, *with traverse*, the invention of Group II, represented by new claims 25-40, drawn to polypeptides, for further prosecution. Applicants reserve the right to file one or more divisional applications directed to non-elected inventions should the restriction requirement be made final. Applicants point out that claims 1 and 3-24 have been canceled without prejudice or disclaimer, and that new claims 25-40 are directed to subject matter falling within the ambit of Group II as cast by the Examiner.

With respect to the Examiner's division of the invention into six groups and the reasons stated therefore, Applicants respectfully disagree and traverse. Even assuming, *arguendo*, that Groups I-VI represented distinct and independent inventions, restriction remains improper unless it can be shown that the search and examination of all groups would entail a "serious burden." M.P.E.P. § 803. In the present situation, although the Examiner has stated that the inventions have "separate status in the art as shown by their different classifications" (Paper No. 0903, page 4, paragraph 9), Applicants nonetheless submit that a search of the claims of any of the groups would also provide useful information for the claims of the other groups. For example, in many if not most publications disclosing a protein, the authors also disclose nucleic acids encoding the protein, and antibodies to the protein. Thus, since the searches for proteins, nucleic acids

encoding such proteins, and antibodies to such proteins commonly overlap, the combined search and examination of such compositions would not entail a serious burden.

Accordingly, in view of M.P.E.P. § 803, the claims of all of Groups I-VI should be searched and examined together in the present application. Applicants therefore respectfully request that the restriction requirement under 35 U.S.C. § 121 be reconsidered and withdrawn. Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

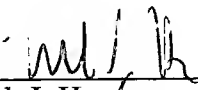
Conclusion

Entry of the above amendment is respectfully solicited. In view of the foregoing remarks, Applicants believe that this application is now in condition for examination, and an early notice to that effect is urged. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicants would expedite the examination of this application.

Finally, if there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136, such an extension is requested and the appropriate fee should also be charged to our Deposit Account.

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Respectfully submitted,

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